

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee  
Hon. Mary Ann Grilli & Hon. Michael Nash, Co-chairs  
Corby Sturges, Attorney, 415-865-4220  
Christopher Wu, Supervising Attorney, 415-865-7721

DATE: September 3, 2003

SUBJECT: Juvenile Law: Educational Representation (amend Cal. Rules of Court, rules 1456, 1460, 1461, 1493, 1496, and 1499; revise forms JV-535 and JV-536; amend Cal. Stds. Jud. Admin., § 24) (Action Required)

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Issue Statement

In 2002, California law governing educational representation of children changed significantly. The California Legislature, in Assembly Bill 886 and Senate Bill 1677, revised the method of appointing an educational representative for a child adjudged a dependent or ward of the court. In SB 1677, the Legislature recommended that the Judicial Council adopt appropriate rules, standards, and forms to implement that bill's requirements and those of AB 886. The current rules and forms do not reflect these statutory changes and are unclear in other respects.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Amend rules 1456, 1460, 1461, 1493, and 1496 of the California Rules of Court to implement the statutory mandate that the juvenile court consider at the disposition hearing and every review hearing in a juvenile delinquency or dependency case whether to limit a parent's or guardian's right to make educational decisions for his or her child and to clarify the language of the rules;
2. Amend rule 1499 of the California Rules of Court to establish a procedure for the juvenile court to limit a parent's or guardian's right to make educational decisions for his or her child and to appoint an educational representative to make those decisions for the child;

3. Revise Judicial Council forms JV-535, *Order Limiting Parents' Right to Make Educational Decisions for the Child and Recommendation for Surrogate Parent Appointment—Juvenile*, and JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*, and rename form JV-535 as *Order Limiting Parent's Right to Make Educational Decisions for the Child and Appointing Responsible Adult as Educational Representative—Juvenile* to reflect the updated legal requirements and the procedure set forth in amended rule 1499; and
4. Amend section 24 of the California Standards of Judicial Administration to make it consistent with the requirements of the Welfare and Institutions Code and the rules of court.

The proposed rules, forms, and standard are attached at pages 5–18.

#### Rationale for Recommendation

In 2002, California law governing the appointment of an educational representative for a child changed significantly with the enactment of Assembly Bill 886 and Senate Bill 1677. This proposal would amend rules 1456, 1460, 1461, 1493, 1496, and 1499 of the California Rules of Court, revise Judicial Council forms JV-535, *Order Limiting Parents' Right to Make Educational Decisions for the Child and Recommendation for Surrogate Parent Appointment—Juvenile*, and JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*, and amend section 24 of the California Standards of Judicial Administration to implement the statutory scheme and to clarify the rules and forms.

AB 886 amended sections 361(a) and 726(b) of the Welfare and Institutions Code to require the juvenile court to appoint a responsible adult as an educational advocate to make educational decisions for a child whenever the court has specifically limited a parent's right to make those decisions. The committee recommends amending rule 1499 and revising form JV-535 to establish a procedure for appointing this responsible adult as an educational representative in conformity with the statutory mandates. The committee also recommends clarifying the court's authority to make educational and placement decisions for children when the court can identify no appropriate responsible adult and the appointment of a surrogate parent is not legally warranted.

SB 1677 amended sections 358.1, 366, 366.1, 366.3, 706.5, and 727.2 of the Welfare and Institutions Code to require the juvenile court to consider at the disposition hearing and each status review hearing whether to limit a parent's right to make educational decisions for his or her child. The committee recommends amending rules 1456, 1460, 1461, 1493, and 1496 to incorporate these new requirements into the disposition and status review hearing procedures.

SB 1677 also amended section 7579.5 of the Government Code to revise the appointment conditions for surrogate parents. The amendment to section 7579.5(a) makes clear that a

local educational agency may appoint a surrogate parent for a child who may need special education only when the court has been unable to identify a responsible adult to make educational decisions for the child. In addition, new section 7579.5(h) requires the local educational agency to terminate the appointment of a surrogate parent who does not perform his or her duties or who has a conflict of interest. The committee recommends amending rule 1499 and revising forms JV-535 and JV-536 to reflect these new requirements.

The rules in this proposal have also been revised to clarify their language and requirements.

#### Alternative Actions Considered

The proposed amendments and revisions are necessary to bring the rules and forms into compliance with governing law and to clarify them. No alternative actions were considered.

#### Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 17, 2003, through July 1, 2003, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. We received a total of nine comments. Six commentators agreed with the proposed changes. Three commentators agreed with the proposal only if it is modified and proposed substantive and technical changes.

One commentator suggested adding the petitioner's name to the top of form JV-535, the order form, because the petitioner is often the party who requests that the court limit a parent's right to make educational decisions and appoint an educational representative. The committee has added space for the petitioner's name to provide flexibility, but notes that Welfare and Institutions Code sections 361(a) and 726(b) do not require a petition or request for the court to limit a parent's or guardian's educational rights or to appoint an educational representative.

The same commentator suggested making clearer on form JV-535 that the appointed educational representative complies with state and federal statutory requirements that he or she not have a conflict of interest with the represented child. The committee has inserted in the order a finding that the appointee has no apparent conflict of interest. This commentator and another also suggested clarifying that a local educational agency must notify the court whenever it appoints, terminates, or replaces the surrogate parent of a dependent or ward of the court. Forms JV-535 and JV-536 have been revised to clarify that duty.

Another commentator suggested adding "foster parent" to rule 1499(c)(1)'s list of persons the court should consider appointing as the educational representative for the child. The committee agrees that foster parents, because of their relationship with the

child and their knowledge of the child’s educational needs, should join the list of preferred appointees.

A third commentator suggested that the term “educational advocate,” used in the original proposal, was too adversarial in connotation and might cause confusion of the appointee with a Court Appointed Special Advocate (CASA). The commentator suggested the term “educational representative” instead. The committee agrees and notes that this term is appropriate because the appointed responsible adult has responsibilities broader than advocacy.

The comments are summarized in the chart attached at pages 19–24.

#### Implementation Requirements and Costs

Implementation of the forms will require courts to incur standard reproduction costs.

Attachments

Rules 1456, 1460, 1461, 1493, 1496, and 1499 of the California Rules of Court and section 24 of the California Standards of Judicial Administration are amended, effective January 1, 2004, to read:

**Rule 1456. Orders of the court**

(a)–(b) \*\*\*

(c) **[Limitations on parental control (§§ 245.5, 361, 362; Gov. Code, § 7579.5)]**

(1)–(2) \*\*\*

(3) ~~The court must consider the educational needs of the child and, if appropriate, proceed under Education Code section 56156 and Government Code section 7579.5.~~ The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child. Any limitation on the right of a parent or guardian to make educational decisions for the child must be specified in the court order.

(d)–(j) \*\*\*

**Rule 1460. Six-month review hearing**

(a)–(d) \*\*\*

(e) **[Determinations—burden of proof (§§ 366, 366.1, 366.21, 364)]**

(1)–(4) \*\*\*

(5) The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child.

(f) **[Conduct of hearing (§ 366.21)]** If the court does not return custody of the child,

(1)–(3) \*\*\*

1 (4) A judgment, order, or decree setting a hearing under section 366.26 may  
2 be reviewed on appeal following the order of the 366.26 hearing only if  
3 the following have occurred:  
4

5 (A)–(B) \*\*\*  
6

7 ~~Review on appeal of the order setting a hearing under section 366.26 is~~  
8 ~~limited to issues raised in a previous petition for extraordinary writ that~~  
9 ~~were supported by an adequate record.~~  
10

11 (5) Review on appeal of the order setting a hearing under section 366.26 is  
12 limited to issues raised in a previous petition for extraordinary writ that  
13 were supported by an adequate record.  
14

15 (6) \*\*\*  
16

17 (7) When the court orders a hearing under section 366.26, the court must  
18 advise orally all parties present, and by first class mail for parties not  
19 present, that, if the party wishes to preserve any right to review on appeal  
20 of the order setting the hearing under section 366.26, the a party must  
21 seek an extraordinary writ by filing:  
22

23 (A) ~~a Notice of Intent to File Writ Petition and Request for Record form~~  
24 ~~(JV-820) or other A notice of the party's intent to file a writ petition~~  
25 ~~and a request for the record, which may be submitted on form JV-~~  
26 ~~820, Notice of Intent to File Writ Petition and Request for Record,~~  
27 ~~Rule 39.1B; and~~  
28

29 (B) ~~a Writ Petition—Juvenile form (JV-825) or other A petition for an~~  
30 ~~extraordinary writ, which may be submitted on form JV-825,~~  
31 ~~Petition for Extraordinary Writ (Juvenile Dependency).~~  
32

33 (8) Within 24 hours of the review hearing, the clerk of the court must provide  
34 notice by first-class mail ~~must be provided by the clerk of the court~~ to the  
35 last known address of any party who is not present when the court orders  
36 the hearing under section 366.26. This notice must include the advice  
37 required by subdivision (f)(7) of this rule.  
38

39 (9) Copies of Judicial Council form ~~Writ Petition—Juvenile Petition for~~  
40 ~~Extraordinary Writ (Juvenile Dependency)~~ (JV-825) and Judicial Council  
41 form ~~Notice of Intent to File Writ Petition and Request for Record, Rule~~  
42 ~~39.1B~~ (JV-820) must be available in the courtroom; and must accompany  
43 all mailed notices of the advice.

~~(8)~~(10) \*\*\*

(g)–(i) \*\*\*

**Rule 1461. Twelve-month review hearing**

**(a) [Requirement for 12-month review; setting of hearing; notice (§ 366.21)]**

The case of any dependent child whom the court has removed from the custody of the parent or guardian ~~shall~~ must be set for review hearing within 12 months ~~after~~ of the date the child entered foster care, as defined in rule 1401, and no later than 18 months from the date of the initial removal. Notice of the hearing ~~shall~~ must be given as provided in rule 1460.

**(b) [Reports (§ 366.21)]** Before the hearing the petitioner ~~shall~~ must prepare a report describing services offered to the family and progress made. The report ~~shall~~ must include:

(1)–(2) \*\*\*

**(c) [Conduct of hearing]** At the hearing, the court ~~shall~~ must state on the record that the court has read and considered the report of petitioner, the report of any Court-Appointed child Special Advocate (CASA), and other evidence, and ~~shall~~ must proceed as follows:

(1) If the child has been removed from the custody of the parent or guardian, the court ~~shall~~ must order the child returned to the parent or guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the child. Failure of the parent or guardian to regularly participate and make substantive progress in a court-ordered treatment program ~~shall be~~ is prima facie evidence that return would be detrimental.

(2) \*\*\*

(3) If the court does not order return of the child, the court ~~shall~~ must specify the factual basis for its finding of risk of detriment to the child. The court ~~shall~~ must order a permanent plan unless the court determines that there is a substantial probability of return within 18 months of the removal of the child. In order to find a substantial probability of return within the 18-month period, the court must find all of the following:

(A)–(C) \*\*\*

1  
2 (4) If the child is not returned to the custody of the parents or guardians, the  
3 court ~~shall~~ must consider whether reasonable services have been provided  
4 or offered. The court ~~shall~~ must find that:

5  
6 (A)–(B) \*\*\*

7  
8 (5) \*\*\*

9  
10 (6) The court must consider whether it is necessary to limit the right of the  
11 parent or guardian to make educational decisions for the child. If the court  
12 limits this right, it must appoint a responsible adult as the educational  
13 representative under rule 1499 to make educational decisions for the  
14 child.

15  
16 (d) **[Determinations and orders]** The court ~~shall~~ must proceed as follows:

17  
18 (1)–(2) \*\*\*

19  
20 (3) Order a hearing under section 366.26 within 120 days, if the court finds  
21 there is no substantial probability of return within 18 months of the  
22 ~~original detention order~~ date of initial removal, and finds by clear and  
23 convincing evidence that reasonable services have been provided to the  
24 parent or guardian.

25  
26 (4) If the court orders a hearing under section 366.26, termination of  
27 reunification services ~~shall~~ must also be ordered. Visitation ~~shall~~ may  
28 continue unless the court finds it would be detrimental to the child.

29  
30 (5) If the court orders a hearing under section 366.26, the court ~~shall~~ must  
31 direct that an assessment be prepared as stated in section 366.21(i).

32  
33 (6) A judgment, order, or decree setting a hearing under section 366.26 is not  
34 an immediately appealable order. Review ~~shall~~ may be sought only by  
35 filing Judicial Council form ~~Writ Petition—Juvenile~~ Petition for  
36 Extraordinary Writ (Juvenile Dependency) (JV-825) or other petition for  
37 extraordinary writ. If a party wishes to preserve any right to review on  
38 appeal of the findings and orders made under this rule, the party is  
39 ~~required to~~ must seek an extraordinary writ under rules 39.1B and 1436.5.

40  
41 (7) A judgment, order, or decree setting a hearing under section 366.26 may  
42 be reviewed on appeal following the order of the 366.26 hearing only if  
43 the following have occurred:



- (A) An extraordinary writ was sought by the timely filing of Judicial Council form ~~Writ Petition—Juvenile~~ Petition for Extraordinary Writ (Juvenile Dependency) (JV-825) or other petition for extraordinary writ; and
- (B) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.
- (8) Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.
- ~~(8)~~(9) Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, ~~shall~~ precludes subsequent review on appeal of the findings and orders made under this rule.
- ~~(9)~~(10) When the court orders a hearing under section 366.26, the court ~~shall~~ must advise orally all parties present, and by first-class mail for parties not present, that, if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the a party is required to must seek an extraordinary writ by filing:
- (A) ~~a Notice of Intent to File Writ Petition and Request for Record form (JV-820) or other~~ A notice of intent to file a writ petition and a request for the record, which may be submitted on form JV-820, Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B; and
- (B) ~~a Writ Petition—Juvenile form (JV-825) or other~~ A petition for an extraordinary writ, which may be submitted on form JV-825, Petition for Extraordinary Writ (Juvenile Dependency).
- (11) Within 24 hours of the review hearing, ~~the clerk of the court must provide~~ notice by first-class mail ~~shall be provided by the clerk of the court~~ to the last known address of any party who is not present when the court orders the hearing under section 366.26. This notice must include the advice required by subdivision (d)(10) of this rule.
- (12) Copies of Judicial Council form ~~Writ Petition—Juvenile~~ Petition for Extraordinary Writ (Juvenile Dependency) (JV-825) and Judicial Council

1 form *Notice of Intent to File Writ Petition and Request for Record, Rule*  
2 *39.1B* (JV-820) ~~shall~~ must be available in the courtroom, and ~~shall~~ must  
3 accompany all mailed notices of the advice.  
4

5 ~~(40)~~(13) If the court orders a hearing under section 366.26, the court ~~shall~~  
6 must order that no notice of the hearing under section 366.26 be provided  
7 to any of the following:  
8

9 (A)–(B) \*\*\*  
10

11 (e) **[Setting a hearing under section 366.26]** At the 12-month review hearing,  
12 the court ~~shall~~ may not set a hearing under section 366.26 to consider  
13 termination of the rights of only one parent unless  
14

15 (1) that parent is the only surviving parent; ~~or~~  
16

17 (2) the rights of the other parent have been terminated by a California court  
18 of competent jurisdiction or by a court of competent jurisdiction of  
19 another state under the statutes of that state; ~~or~~  
20

21 (3) the other parent has relinquished custody of the child to the county  
22 welfare department.  
23

#### 24 **Rule 1493. Orders of the court** 25

26 (a)–(c) \*\*\*  
27

28 (d) **[Removal of custody—orders regarding reunification services (§ 727.2)]**  
29

30 (1) Whenever the court orders the care, custody, and control of the child to be  
31 under the supervision of the probation officer for placement, the court  
32 must order the probation department to ensure the provision of  
33 reunification services to facilitate the safe return of the child to his or her  
34 home or the permanent placement of the ~~minor~~ child and to address the  
35 needs of the ~~minor~~ child while in foster care.  
36

37 (2) ~~However,~~ Reunification services need not be provided to the parent or  
38 guardian if the court finds, by clear and convincing evidence, that one or  
39 more of the exceptions listed in section 727.2(b) ~~are~~ is true.  
40

41 (e) **[Wardship orders (§§ 726, 727, 727.1, 730, 731)]** The court may make any  
42 reasonable order for the care, supervision, custody, conduct, maintenance,  
43 support, and medical treatment of a child declared a ward.

(1)–(4) \*\*\*

(5) ~~The court must consider the educational needs of the child and, if appropriate, proceed under Education Code section 56156 and Government Code section 7579.5. Any limitation on the right of a parent or guardian to make education decisions for the child must be specified in the court order.~~ The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child.

(f)–(g) \*\*\*

#### **Rule 1496. Reviews and permanency planning hearings**

(a) **[Six-month status review hearings (§§ 727.2, 11404.1)]** A status review hearing must be conducted no less frequently than once every six months from the date the ward entered foster care, for any ward removed from the custody of his or her parent or guardian under section 726 and placed under section 727. The court may consider the hearing at which the initial order for placement is made as the first status review hearing.

(1)–(2) \*\*\*

(3) *(Findings and orders (§ 727.2(d))* The court must consider the safety of the ward and make findings and orders that determine the following:

(A)–(B) \*\*\*

(C) Whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child.

~~(C)~~(D) \*\*\*

~~(D)~~(E) \*\*\*

~~(E)~~(F) \*\*\*

1 (4) \*\*\*

2  
3 (b)–(f) \*\*\*

4  
5 **Rule 1499. ~~Surrogate parent appointment~~ Appointment of responsible adult as**  
6 **educational representative**

7  
8 (a) **[Parent’s educational rights limited (§§ 361, 726)]** The juvenile court may  
9 ~~make an appropriate order~~ specifically limiting a parent’s or a guardian’s right  
10 to make educational decisions for a child who is ~~the subject of a petition~~  
11 adjudged a dependent or ward of the court under Welfare and Institutions Code  
12 section 300, 601, or 602, but the limitations ~~must~~ may not exceed those  
13 necessary to protect the child. The court must order ~~must be prepared~~ any  
14 limitation on form JV-535, *Order Limiting Parent’s<sup>2</sup> Right to Make*  
15 *Educational Decisions for the Child and Recommendation for Surrogate*  
16 *Parent Appointment* Appointing Responsible Adult as Educational  
17 Representative—Juvenile.

18  
19 (b) **[Appointment of responsible adult as educational representative (§§ 361,**  
20 **726)]** Whenever the court limits the right of a parent or guardian to make  
21 educational decisions for the child, the court must at the same time use form  
22 JV-535 to appoint a responsible adult as an educational representative to make  
23 educational decisions for the child until:

24  
25 (1) The child reaches 18 years of age, unless the child then chooses not to  
26 make educational decisions or is deemed incompetent by the court;

27  
28 (2) The court appoints another responsible adult to make educational  
29 decisions for the child under this rule;

30  
31 (3) The court restores the right of the parent or guardian to make educational  
32 decisions for the child;

33  
34 (4) The court appoints a successor guardian or conservator; or

35  
36 (5) The child is placed in a planned permanent living arrangement under  
37 section 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6) of the  
38 Welfare and Institutions Code, in which case the foster parent, relative  
39 caregiver, or nonrelative extended family member has the right to make  
40 educational decisions for the child under section 56055(a) of the  
41 Education Code unless excluded by the court.

42  
43 (c) **[Limits on appointment (§§ 361, 726)]**

1  
2 (1) The court should consider appointing a responsible adult relative,  
3 nonrelative extended family member, foster parent, family friend, mentor,  
4 or Court Appointed Special Advocate (CASA) as the educational  
5 representative if one is available and willing to serve.

6  
7 (2) The court may not appoint any individual as the educational  
8 representative if that person would have a conflict of interest as defined  
9 by section 361(a) or 726(b).

10  
11 **(b)(d) [Appointment of surrogate parent (Gov. Code, § 7579.5)]**

12  
13 (1) ~~If the court has ordered the specific limitation of~~ specifically limited a  
14 parent's or a guardian's right to make educational decisions for the a  
15 child, but cannot identify a responsible adult to make educational  
16 decisions for the child and the child may be eligible for special education  
17 and related services or already has an individualized education program,  
18 the court must use form JV-535 to refer the child to the responsible local  
19 educational agency must promptly appoint for prompt appointment of a  
20 surrogate parent as provided in under Government Code section 7579.5.

21  
22 (2) ~~Under Government Code section 7579.5(e), the local educational agency~~  
23 ~~must select, as a first preference, a relative caretaker, foster parent, or~~  
24 ~~Court Appointed Special Advocate (CASA) if any of these individuals is~~  
25 ~~willing and able to serve as a surrogate parent. If the court refers a child~~  
26 ~~to the local educational agency for appointment of a surrogate parent, the~~  
27 ~~court must order that form JV-536, *Local Educational Agency Response*~~  
28 ~~to JV-535—Appointment of Surrogate Parent, be served by first-class~~  
29 ~~mail on the local educational agency along with form JV-535.~~

30  
31 (3) ~~To assist the local educational agency in selecting a statutorily preferred~~  
32 ~~surrogate, the court may recommend a surrogate who is willing and able~~  
33 ~~to serve. This recommendation must be made in writing on form JV-535~~  
34 ~~and must be served on the local educational agency by first class mail.~~

35  
36 (4)(3) ~~Whenever the local educational agency has appointed or removed a~~  
37 ~~surrogate parent under Government Code section 7579.5(g) appoints a~~  
38 ~~surrogate parent for a dependent or ward under Government Code section~~  
39 ~~7579.5(a)(1), it must notify the court on form JV-536 within 21 calendar~~  
40 ~~days of the date of the appointment.~~

41  
42 (4) Whenever the local educational agency terminates the appointment of a  
43 surrogate parent for a dependent or ward under Government Code section

1                    7579.5(h) or replaces the surrogate parent for any other reason, it must  
2                    notify the court on form JV-536 within 21 calendar days of the date of the  
3                    termination or replacement.  
4

5        ~~(e) [Local educational agency response] The court must also serve the local~~  
6                    ~~educational agency by first class mail with form JV 536, *Local Educational*~~  
7                    ~~*Agency Response to JV 535—Appointment of Surrogate Parent.* Form JV 536~~  
8                    ~~must be completed by the local educational agency upon the appointment of a~~  
9                    ~~surrogate parent and returned to the court within 21 calendar days from the~~  
10                    ~~date of the appointment.~~  
11

12        **(e) [Unavailability of responsible adult (§§ 361, 726)]** If the court cannot  
13                    identify a responsible adult to make educational decisions for the child, the  
14                    appointment of a surrogate parent is not legally warranted, and there is no  
15                    foster parent to exercise the authority granted by section 56055 of the  
16                    Education Code, the court may, with the input of any interested person, make  
17                    educational decisions for the child.  
18

## 19        **Sec. 24. Juvenile Court Matters** 20

21        **(a)–(g) \*\*\***  
22

23        **(h) [Role of the juvenile court]** The juvenile court should:  
24

25                    (1)–(2)        \*\*\*  
26

27                    (3)        Require that court reports, case plans, assessments, and permanency plans  
28                    considered by the court address a child’s educational entitlements and  
29                    how those entitlements are being satisfied, and contain information to  
30                    assist the court in deciding whether the right of the parent or guardian to  
31                    make educational decisions for the child should be limited by the court  
32                    under ~~Government Code section 7579.5~~ Welfare and Institutions Code  
33                    section 361(a) or 726(b). Information concerning whether the school  
34                    district has met its obligation to provide educational services to the child,  
35                    including special educational services if the child has exceptional needs  
36                    under Education Code section 56000 et seq., and to provide  
37                    accommodations if the child has disabilities as defined in section 504 of  
38                    the Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104.1 et seq.  
39                    (1980)) should also be included, along with a recommendation for  
40                    disposition.  
41

42                    (4)        \*\*\*  
43

- 1 (5) Make appropriate orders limiting the educational rights of a parent or  
2 guardian who cannot be located or identified, or who is unwilling or  
3 unable to be an active participant in ensuring that the child's ~~special~~  
4 educational needs are met, and ~~request that the local education agency~~  
5 ~~appoint a surrogate parent~~ appoint a responsible adult as educational  
6 representative for such a child or, if a representative cannot be identified  
7 and the child may be eligible for special education and related services or  
8 already has an individualized education program, use form JV-535 to  
9 refer the child to the local educational agency for special education and  
10 related services and prompt appointment of a surrogate parent. (Welf. &  
11 Inst. Code, §§ 361, 726; Ed. Code, § 56156; Gov. Code, § 7579.5.)  
12  
13 (6) \*\*\*

PETITIONER OR ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO. (Optional): FAX NO. (Optional): E-MAIL ADDRESS (Optional):	FOR COURT USE ONLY  <div style="text-align: center; font-size: 24pt; font-weight: bold;">DRAFT 5</div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">09/25/03</div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%; text-align: center;"> <b>ORDER LIMITING PARENT'S RIGHT TO MAKE EDUCATIONAL DECISIONS FOR THE CHILD and APPOINTING RESPONSIBLE ADULT AS EDUCATIONAL REPRESENTATIVE—JUVENILE</b> </div> <div style="width: 35%;">         CASE NUMBER:       </div> </div>	

1. a. Date of hearing: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_
- b. Judicial officer (name): \_\_\_\_\_
- c. Persons present:
- ☐ Child ☐ Child's attorney ☐ Mother ☐ Mother's attorney ☐ Father  
☐ Fathers attorney ☐ Guardian ☐ Deputy district attorney ☐ Probation officer/social worker  
☐ Deputy county counsel ☐ CASA ☐ Other: \_\_\_\_\_
2. Child's name: \_\_\_\_\_ Date of birth: \_\_\_\_\_ ☐ General Education  
☐ Referred for assessment
3. Child's school district: \_\_\_\_\_ ☐ Special Education
4. Child's school (name and address): \_\_\_\_\_
5. Child's social worker: \_\_\_\_\_
6. Child's supervising social worker: \_\_\_\_\_
7. Child's probation officer: \_\_\_\_\_
8. **After consideration of the evidence, the court finds and orders under Welfare and Institutions Code section 361(a) or 726(b):**
- The right of the ☐ mother ☐ father ☐ mother and father ☐ guardian to make educational decisions for the child is specifically limited by this court.
- Parent or legal guardian whose right to make educational decisions for the child is being limited (name each): \_\_\_\_\_
- a. ☐ The child is placed in a planned permanent living arrangement under Welfare and Institutions Code section 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6) and:
- (1) ☐ the following foster parents, relative caregivers, or nonrelative extended family members may represent the child in educational matters under Education Code section 56055(a) without court appointment.
- (2) ☐ the following foster parents, relative caregivers, or nonrelative extended family members may not make educational decisions for the child under Education Code section 56055(b).
- Name: \_\_\_\_\_
- Address: \_\_\_\_\_
- Telephone No.: \_\_\_\_\_
- Relationship to child: \_\_\_\_\_



CHILD'S NAME: _____	CASE NUMBER: _____
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- b. ☐ The following responsible adult, who has no apparent conflict of interest, is appointed to make educational decisions for the child until ☐ the next hearing in this matter ☐ the court orders otherwise.

Name:

Address:

Telephone No.:

Relationship to child:

- c. ☐ The court cannot identify a responsible adult to make educational decisions for the child, and the child is potentially eligible for special education and related services or already has an individualized education program. Therefore, the court refers the child to the local educational agency for prompt appointment of a surrogate parent for the child under Government Code section 7579.5. The local educational agency must notify the court of the identity of the appointee on attached form JV-536 within 21 calendar days of the date of the appointment, termination, or replacement of a surrogate parent.
- d. ☐ The court cannot identify a responsible adult to make educational decisions for the child, and the appointment of a surrogate parent is not legally warranted. The court, with input from any interested person, will make educational decisions for the child.

9. A copy of this order must be served on the local educational agency by:

- a. ☐ a representative of the county welfare department.
- b. ☐ a representative of the county probation department.
- c. ☐ the clerk of this court.

☐ Attachments *(If box 8.c. is checked, form JV-536, Local Educational Agency Response to JV-535—Appointment of Surrogate Parent, must be attached.)*

10. This order applies to any school or school district in the State of California.

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

LOCAL EDUCATIONAL AGENCY REPRESENTATIVE <i>(Name and address):</i>   TELEPHONE NO. <i>(Optional):</i> _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____	FOR COURT USE ONLY   <div style="text-align: center; font-size: 24pt; font-weight: bold;">DRAFT 5</div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">09/25/03</div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<div style="text-align: center; font-weight: bold;">LOCAL EDUCATIONAL AGENCY RESPONSE TO JV-535—APPOINTMENT OF SURROGATE PARENT</div>	CASE NUMBER:

This form must be completed and returned to the court at the address listed above within 21 calendar days of the date of the appointment, termination, or replacement of a surrogate parent.

1. Child's name:
2. Child's school:
3. Address of child's school:
4. School personnel contact *(name, title, and telephone no.):*
5. a. Appointed surrogate parent's name: ☐ New ☐ Replacement
- b. Appointed surrogate parent's address:
- c. Appointed surrogate parent's telephone number:
- d. Appointed surrogate parent's relationship to the child:
6. ☐ The previous surrogate parent was terminated under section 7579.5(h) of the Government Code.  
☐ Name of previous surrogate parent: \_\_\_\_\_

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(TITLE)

**SPR03-48****Juvenile Law: Educational Representation**

(amend Cal. Rules of Court, rules 1456, 1460, 1461, 1493, 1496, and 1499;  
amend Cal. Stds. Jud. Admin. § 24; revise forms JV-535 and JV-536)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Hon. Brian J. Back Juvenile Court Presiding Judge Superior Court of California, County of Ventura	A	N	<i>No specific comment.</i>	No response required.
2.	Mr. Robert Gerard President Orange County Bar Association	A	Y	The proposed changes appear to conform to existing law and impose no new duties on the court or the parties in a juvenile dependency proceeding.	No response required.
3.	Ms. Tricia McCoy Supervising Clerk—Juvenile Division Superior Court of California, County of Kern	A	Y	Is there a significant difference between “shall” and “must”?	Yes. “Shall” is ambiguous. The council adopted a policy, effective January 1, 2001, to replace “shall” in all rules of court. When “shall” is used to impose a duty, we replace it with “must” for clarity.
4.	Hon. Kenneth G. Peterson Presiding Judge Superior Court of California, County of Sacramento	AM	N	1. In Sacramento, the petitioner, not the child’s attorney, usually makes the request to limit a parent’s or guardian’s educational rights. Add “Petitioner” to the caption box of forms JV-535 and JV-536.	1. Agree in part. No petition or request is required for the court to limit a parent’s or guardian’s educational rights or to appoint an educational representative under Welfare and Institutions Code sections 361(a) and 726(b), but clarifying that multiple persons may submit the form may help bring the issue to the court’s attention. The caption box of form JV-536 has been revised to specify that a representative of the appropriate local educational agency must complete that form. 2. In certain cases, particularly in

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>2. Add a space for the court to indicate the date of the next hearing in item 8.b. on form JV-535 so the local educational agency will know when the order expires if the court chooses to limit the order's effect to the period between hearings.</p> <p>3. Include on forms JV-535 and JV-536 a notice of the prohibition against the appointment of educational representatives, including surrogate parents, with conflicts of interest.</p> <p>4. Use a consistent term to designate the educational representative. Departure from the federal term <i>surrogate parent</i> is not required.</p>	<p>delinquency, the court may not set a new hearing date when it issues this order. Even in cases in which the court does set a hearing date, the specification of a hearing date may cause confusion and leave a child without educational representation for a time because hearing dates frequently change.</p> <p>3. Agree in part. The form has been revised to include a judicial finding that the appointee has no apparent conflict of interest.</p> <p>4. The educational representative appointed under sections 361(a) and 726(b) of the Welfare and Institutions Code differs from a surrogate parent in at least two important respects. First, the educational representative may make educational decisions for a child in general education. The surrogate parent's authority is limited to decisions relating to special education and related services. Second, the court's authority to appoint an educational representative is limited to children under its jurisdiction. A surrogate parent, on the other hand, may also be appointed when no parent</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>5. Include in item 8.c. on form JV-535 the requirement that the local educational agency advise the court of the termination or replacement of the original surrogate parent.</p> <p>6. Include on form JV-536 a notice that the local educational agency must send the court a copy of the form if it terminates or replaces the original surrogate parent.</p> <p>7. Move the unnumbered box following item 9 up so it follows item 8 because it applies only to form JV-536.</p> <p>8. Delete “and recommendation” from item 9 on form JV-535. The court no longer makes a recommendation to the local educational agency.</p> <p>9. Include a check box and line in item 9 on form JV-535 for the court to order the child’s attorney to serve the order on the local educational agency.</p> <p>10. In item 9 on form JV-535, use letters instead of numbers to designate the subitems and place the check boxes to the left of the letters.</p> <p>11. Insert a new item on form JV-535 to indicate that the educational advocate satisfies the federal requirements for surrogate parent appointment.</p>	<p>for the child can be identified or the local educational agency cannot locate a parent. For these reasons, separate terms are needed.</p> <p>5. Agree. The form has been revised.</p> <p>6. Agree. The form has been clarified.</p> <p>7. The box applies to any attachment, including but not limited to form JV-536.</p> <p>8. Agree. The form has been revised.</p> <p>9. Service of orders is a court function. The form gives the court sufficient options for service.</p> <p>10. Agree in part. The form has been revised to be internally consistent and consistent with other Judicial Council forms.</p> <p>11. Agree in part. The form has been revised to include a judicial finding that the appointee has no apparent conflict</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
					of interest.
5.	Ms. Arleen D. Russo Attorney Superior Court of California, County of Calaveras	A	N	<i>No specific comment.</i>	No response required.
6.	Mr. Saul Bercovitch State Bar of California Family Law Section	A	Y	Approve.	No response required.
7.	Ms. Molly Dunn Staff Attorney Legal Services for Children San Francisco	A	Y	Legal Services for Children strongly supports proposal SPR03-48. The proposal, by requiring the court to consider at each stage of a juvenile proceeding whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child, will help ensure that the educational needs of children with learning disabilities under the jurisdiction of the court are identified and met. The proposal also clarifies the court's authority to appoint an educational advocate for a child and ensures to the greatest extent possible that an adult who has a relationship with the child will be vested with the right to make educational decisions on his or her behalf. Finally, to the extent the court can appoint a representative for the child, the proposal both eliminates any delay between the court's limitation of the parent's educational rights and the appointment of a surrogate parent by the local educational agency and avoids any conflicts of interest that might arise for a surrogate parent appointed and trained by the agency.	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
8.	Mr. Stephen Love Executive Officer Superior Court of California, County of San Diego	AM	Y	<ol style="list-style-type: none"> <li>1. Delete “Any limitation on the right of a parent or guardian to make educational decisions for the child must be specified in the court order” from rule 1456(c)(3).</li> <li>2. In rule 1460(f)(7)(B), insert “JV-“ before “825.”</li> <li>3. In rule 1461(c), replace “court-appointed child advocate” with “court-appointed special advocate (CASA)” to be consistent with other juvenile rules.</li> <li>4. For internal consistency, change “parents or guardians” to “parent or guardian” in rule 1461(c)(4).</li> <li>5. In rule 1461(d)(3), change “original detention order” to “date of initial removal.”</li> <li>6. In rule 1461(d)(6), change “is required to” to “must.”</li> <li>7. In rule 1493(d), change “minor” to “child.”</li> <li>8. In rule 1499(a), change “the subject of a petition” to “adjudged a dependent or ward of the court.”</li> <li>9. Add “(4) The court appoints a successor guardian or conservator” to rule 1499(b) and renumber paragraph 4 as paragraph 5.</li> <li>10. Add “foster parent” to rule 1499(c)’s list of persons the court should consider appointing as the educational advocate.</li> </ol>	<ol style="list-style-type: none"> <li>1. Welfare and Institutions Code section 361(a) still requires that that any limitation be specified in the court order. Rule 1499’s requirement that the court issue the order on form JV-535 is an elaboration of this requirement, not its replacement.</li> <li>2. Agree. The form has been revised.</li> <li>3. Agree. The form has been revised.</li> <li>4. Agree. The form has been revised.</li> <li>5. Agree. The form has been revised to comply with federal law.</li> <li>6. Agree. The form has been revised.</li> <li>7. Agree. The form has been revised.</li> <li>8. Agree. The form has been revised.</li> <li>9. Agree. The form has been revised.</li> <li>10. Agree. Foster parents, because of their relationship with the child and their knowledge of the child’s educational</li> </ol>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				11. Specify Welfare and Institutions Code section “726(b)” in line one of item 8 on form JV-535. 12. Add “or of the termination or replacement of a surrogate parent” to sentence one on form JV-536. 13. In item 6 on form JV-536, add space to designate the terminated surrogate’s name and reasons for his or her termination.	needs, should join the list of preferred appointees. 11. Agree. The form has been revised. 12. Agree. The form has been revised. 13. Agree in part. The local educational agency should provide the name of the terminated surrogate to the court, but requiring the agency to reveal the reasons for termination may reveal information better left confidential.
9.	Ms. Avril Vasquez Deputy County Counsel Office of the County Counsel County of Santa Clara	AM	N	1. Change “educational advocate” to “educational representative” in rules 1456(c)(3), 1460(e)(5), 1461(c)(6), 1493(e)(5), 1496(a)(3)(C), and 1499. The term <i>advocate</i> has adversarial connotations and may promote confusion with Court Appointed Special Advocates (CASAs). 2. Conform section 24(h)(5) of the Standards of Judicial Administration to rule 1499(d)(1), which limits the circumstances in which the court will refer a child to a local educational agency for appointment of a surrogate parent.	1. Agree. The role of the “responsible adult” envisioned by sections 361(a) and 726(b) of the Welfare and Institutions Code is broader than advocacy. The right to make educational decisions on behalf of the child is more properly called representation. 2. Agree. The standard has been revised.